



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/016,737	01/30/1998	GERALD P. MURPHY	8511-007	7366

7590

03/25/2003

Brian W. Poor  
Townsend and Townsend and Crew LLP  
Two Embarcadero Center, 8th Fl.  
San Francisco, CA 94111

EXAMINER

DAVIS, MINH TAM B

ART UNIT	PAPER NUMBER
----------	--------------

1642

DATE MAILED: 03/25/2003

30

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/016,737

Applicant(s)

MURPHY ET AL.

Examiner

MINH-TAM DAVIS

Art Unit

1642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 05 December 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: none.

Claim(s) withdrawn from consideration: 23-24, 26, 28-37 because claims 23-24, 26, 28-38 are not and will not be entered, for reasons set forth above.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The amended claim 1 raises new matter issue, because the specification does not teach a control "having the same number of cells that has not been exposed in vitro to the prostate antigen"..

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **ANSWERS TO APPLICANT ARGUMENTS AGAINST THE REJECTION UNDER 35 USC 112, SECOND PARAGRAPH**

Even if claim 31 were to be entered, claim 31 remains rejected under 35 USC 112, second paragraph pertaining to the use of the indefinite language "directly isolated" for reasons already of record in paper No:23.

Applicant asserts that claim 23 has been amended to delete "directly isolated".

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

Rejection remains because claim 31 has not been amended and still has the language "directly isolated".

### **ANSWERS TO APPLICANT ARGUMENTS AGAINST THE REJECTION UNDER 35 USC 102**

Even if claims 23-24, 31-36 were to be entered, claims 23-24, 31-36 remain rejected under 35 USC 102, pertaining to obviousness over Cohen et al, as evidenced by Sallusto et al, Koch et al, and Czerniecki et al, for reasons already of record in paper No:23.

Applicant asserts that Koski et al has a publication date of 1999, well after the date of the present invention. Applicant asserts that Cohen et al teach that the time period for treating monocytes is a 24 to 48 hour incubation with the calcium ionophore for conversion of the cells into "activated" dendritic cells so that they also can participate in effective antigen processing and presentation. Applicant asserts that Example 2 by Cohen et al is not supported by any data.

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

It is noted that the reference by Koski et al is cited to show the inherent property of the monocytes treated with calcium ionophore, and thus the date of the publication of the reference by Koski et al is not relevant.

The monocytes treated with calcium ionophore taught by Cohen et al would inherently have immature dendritic cells, up to 4 hrs, and even up to at least 20 hours after calcium ionophore treatment, as evidenced by Koshi et al, who teach that monocytes CD83 expression (property of mature dendritic cells) appear within 4 hrs and peaked at 20 hours of calcium ionophore treatment.

**ANSWERS TO APPLICANT ARGUMENTS AGAINST THE REJECTION UNDER 35  
USC 103**

1. Even if claim 26 were to be entered, claim 26 remains rejected under 35 USC 103 pertaining to obviousness over Cohen et al, in view of Lutz et al, for reasons already of record in paper No:23.

Applicant argues that Cohen et al do not disclose the claimed dendritic cells, and therefore Lutz et al add nothing to render obvious the immortalized dendritic cells.

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

The claimed dendritic cells are not patentably distinct from the dendritic cells taught by Cohen et al, for reasons set forth previously and above.

2. Even if claims 28, 29 were to be entered, claims 28, 29 remain rejected under 35 USC 103 pertaining to obviousness over Cohen et al, in view of Taylor et al, for reasons already of record in paper No:23.

Applicant argues that Cohen et al do not disclose the claimed dendritic cells, and Taylor et al do not provide sufficient guidance nor motivation to render claims 28-29 obvious.

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

The claimed dendritic cells are not patentably distinct from the dendritic cells taught by Cohen et al, for reasons set forth previously and above.

Further, the motivation to combine the references is obvious, i.e. to preserve the previously isolated cells, as taught by Taylor et al.

3. Even if claim 30 were to be entered, claim 30 remains rejected under 35 USC 103 pertaining to obviousness over Cohen et al, in view of Taylor et al, further in view of Lutz et al, for reasons already of record in paper No:23.

Applicant argues that Cohen et al do not disclose the claimed dendritic cells, and Taylor et al and Lutz et al do not provide sufficient guidance nor motivation to render claim 30 obvious.

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

The claimed dendritic cells are not patentably distinct from the dendritic cells taught by Cohen et al, for reasons set forth previously and above.

Further, the motivation to combine the references is obvious, i.e. to use the immortalized dendritic cells and to be able to maintain the cells for long term in vitro, by immortalizing and preserving the previously isolated cells, as taught by Taylor et al and Lutz et al.

4. Even if claim 37 were to be entered, claim 37 remains rejected under 35 USC 103 pertaining to obviousness over Cohen et al, in view of Stites et al, for reasons already of record in paper No:23.

Applicant argues that Cohen et al do not disclose the claimed dendritic cells, and Stites et al do not provide sufficient guidance nor motivation to render claim 37 obvious.

Applicant's arguments in paper No: 28 have been considered but are found not to be persuasive for the following reasons:

The claimed dendritic cells are not patentably distinct from the dendritic cells taught by Cohen et al, for reasons set forth previously and above.

Further, the motivation to combine the references is obvious, i.e. to match HLA antigen as taught by Stites et al, which is important for T cell recognition of immunogens

Art Unit: 1642

in conjunction with MHC, and for the possibility of rejection due to difference in HLA type, as taught by Stites et al.

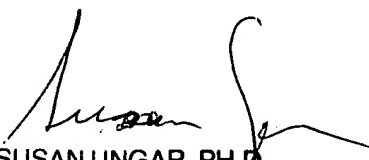
Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-TAM DAVIS whose telephone number is 703-305-2008. The examiner can normally be reached on 9:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANTHONY CAPUTA can be reached on 703-308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0916.

MINH TAM DAVIS

March 13, 2003

  
SUSAN UNGAR, PH.D.  
PRIMARY EXAMINER